

Article Published by Royal Medical Benevolent Fund on www.support4doctors.org

This article is subject to copyright protection. Please do not copy this material in any form without the prior written permission of DR Solicitors (info@drsolicitors.com)

The information contained in this article is not tailored to any specific circumstances, nor does it necessarily represent the most recent legal developments. As such DR Solicitors cannot accept responsibility for any reliance placed on it. You should always seek up to date legal advice specific to your circumstances.

Recruiting Salaried GPs and the BMA Model Terms of Employment

Background

The lack of GP partnership opportunities means that an increasing number of GPs are taking up salaried contracts, whether this is to work in a GP practice or to work for the PCT/LHB or for an alternative provider of medical services including APMS, SPMS and out-of-hours providers. The employment contract route is also frequently being used in preference to an equity Partner serving out a probationary period and there are a growing number of GPs who have no interest in becoming partners and taking on a full, unlimited liability share of the business and its inherent responsibilities. This change has increased interest in the different contractual terms under which GPs are employed.

Model Terms

A lively media debate has recently started on whether the terms of the BMA Model contract are "overly generous" to GPs working on a salaried contract. Certainly we find that many GP employers are wary of the Model Contract, most commonly with regard to the terms related to rest breaks; generous maternity rights, annual leave; protected CPD time; NHS pensionable service benefits; the recognition of previous NHS continuity of service with respect to e.g. maternity, sickness and redundancy rights; and the minimum salary ranges suggested by the DDRB (subject to annual pay uplifts). However, it is exactly for these reasons that salaried GPs like the Model Terms and many would argue that they would only work for an employer which offered them.

Who is bound to adopt the Model Terms?

The law states that GMS practices must offer their salaried GPs the Model Terms of Employment or terms and conditions which are no less favourable. Most GMS practices also have this requirement stated in their GMS contract with the PCT/LHB. Practices should be clear that there is no obligation to use the actual BMA contract, though many Practices choose to do so. If such a GMS practice puts a salaried GP on less favourable terms they may be in breach of their GMS contract and risk having it terminated on these grounds. There are a number of GMS practices who negotiated this requirement out of their PCT/LHB contract so these GMS practices are free to use whatever terms they wish, in relation to their salaried GPs.

Subject to any variation in their PMS Contracts to the contrary, PMS practices are not bound to adopt the BMA Model Terms so PMS practices are able to use whatever contract they wish for their salaried GPs although the GPC and BMA recommend that they adopt the Model Terms.

Existing staff?

Whilst it is perfectly acceptable to have salaried GPs on different terms and conditions within one surgery, there is a risk that this could give rise to allegations of discrimination. For example, if one salaried GP is being paid less than another for the same hours, the GP receiving the lower salary could argue that the reason for the wage difference is that he / she is being treated less favourably on the grounds of race, sex, age, disability etc. A practice would be wise to review all its' staff contracts and, if necessary, take legal advice.

GPs already working in an employed capacity for a GMS practice should check their contract for comparabilty to the BMA model. For example, if you are being paid a substantially higher salary but coupled with reduced maternity or parental leave rights, this may be an acceptable variation which suits both parties. Similarly, if a GP was paid a large bonus in return for reduced annual leave, then this may or may not make the terms less favourable than those of the BMA. Bear in mind though that establishing whether an alternative employment contract is no less favourable than the BMA Model terms will be a difficult test to determine and we are not aware of any legal precedents. Our strong recommendation is to agree all variations in advance of the contract being drawn up so that there is some written evidence that both parties agree to the changes should any dispute arise later.

Disputes

The key challenge for any disputes arising with respect to the BMA model contract is how they should be resolved. It seems unlikely that an individual GP could enforce his / her rights to BMA Model Terms directly against a practice in an Employment Tribunal. The more likely scenario would be for a dispute to arise between the practice and the PCT as to whether the surgery is in breach of its GMS contract. In our experience this has rarely if ever happened, as PCTs are more focused on ensuring standards of patient care and generally regard employment issues as a matter for the Practice to resolve.

Conclusion

Our advice to all surgeries, whether GMS or PMS, is to:

- Decide as a Practice Policy whether they wish to employ salaried GPs. Alternative contractual options for engaging GPs exist, which should also be considered.
- Determine whether the practice is obliged to offer the BMA Model Contract or terms which are no less favourable.
- Review any existing salaried GP contracts for compliance and consistency.

Be aware that this is a complex and controversial area, and we recommend that Practices seek expert legal advice before offering something different to the BMA Model Terms.

Daphne Robertson is the founding partner of DR Solicitors, a firm of Solicitors who specialise in providing medical business law advice to NHS GP practices throughout the UK.

Mail: info@drsolicitors.com

Tel: 01483 511 555

Web: www.drsolicitors.com